IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.03.2002

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR
AND
THE HONOURABLE MR.JUSTICE A.PACKIARAJ

Criminal Appeal No.345 of 1994

Jambulingam .. Appellant/Accused

-vs-

State represented by
Inspector of Police,
Kammapuram Police Station. .. Respondent

Appeal against the judgment of the learned Sessions Judge, South Arcot Vallalar at Cuddalore made in S.C.No.10 of 1994 dated 13.4.93.

! For Appellant : Mr.P.Venkatasubramaniam
^ For Respondent : Mr.S.Jayakumar
Addl. Public Prosecutor.

: J U D G M E N T

(Judgment of the Court was delivered by N.DHINAKAR, J.)

The accused appeals.

2. The appellant, who hereinafter will be referred to as 'the accused', was tried before the learned Sessions Judge, South Arcot, on a charge of murder with an allegation that at 11.30 p.m. on 20.8.93, he inflicted injuries on his wife Aboorvam by cutting her with a knife on several parts of her body and that on account of the said injuries, the said Aboorvam died while she was on her way to the hospital at Cuddalore. On the evidence, the learned Sessions Judge convicted and sentenced him to imprisonment for life.

3. The case of the prosecution as could be discerned from the oral and documentary evidence can be briefly summarised as follows:-

The deceased is the wife of the accused and she was given in marriage to the accused about 20 years prior to the date of incident. After the marriage, a son, by name Karthikeyan, was born and at the time of incident, he

was about 17 or 18 years of age. The accused was eeking his livelihood by rearing ducks. After the marriage, the accused developed intimacy with another woman and deserted his wife. He sold four or five acres of land. He also mortgaged the house belonging to him. The deceased was, therefore, forced to go and reside with her brother, P.W.4, at Karuveppilankurichi. 20 days prior to the date of incident, the deceased with her son Karthikeyan went to Keezhapalayam. The deceased wanted to file a suit regarding the mortgage of the house. This is said to be the motive. P.Ws.1 and 2, the residents of Keezhapalayam, were returning to their respective residence after seeing a movie in the colony. As they were crossing the house of the deceased, they heard some noises emanating from the house. P.W.2 told P.W.1 that they should go and find out the cause for the noise. Therefore, both went to the house of the deceased. A chimney lamp was burning inside the house. They found the accused cutting the deceased on various parts of her body with a knife. P.Ws.1 and 2 raised alarm and on hearing the cries, the villagers rushed to the house. The accused ran out of the house and was seen by the villagers including P.W.3. The villagers wanted to apprehend the accused but the accused told P.W.3 that he is going to the police station to surrender and that they should not interfere in his affairs. The accused thereafter went away from the scene. P.Ws.1 and 2 entered the house and found Aboorvam lying with injuries. A van was brought, in which Aboorvam was placed and taken to the hospital at Vridhachalam, where she was produced before P.W.7, the duty doctor, who on examining her, found the following injuries:-

1.Spindle shaped lacerated injury 6 cm. x 4 cm. at its widest part x 1 cm. depth in the left upper part of the left arm.
2.Spindle shaped lacerated injury 4 cm. x 3 cm. at its widest part x 1/2 cm. upper part of the left arm.
3.6 cm. x 1 cm. x 1/2 cm. spindle shaped lacerated injury in the left upper of the chest wall.
4.8 cm. x 3 cm. x 1 cm. lacerated injury in the back of the neck.
5.8 cm. x 3 cm. x 1 cm. lacerated injury in the back of the neck just above the injury No.4.
6.'>-' shaped injury 6 cm. x 2 cm. x 1/2 cm. in the right shoulder joint.
7.Lacerated injury 6 cm. x 3 cm. x 1/2 cm. in the right shoulder joint.
8.Lacerated injury 4 cm. x 2 cm. x 1/2 cm. in the left side of the face just lateral to outer canther of the left eye.
9.Lacerated injury 4 cm. x 2 cm. x 1/2 cm. in the right fore arm.
10.Lacerated injury 3 cm. x 1/2 cm. x 1 cm. in the right ring finger with tendon exposed.
11.Lacerated injury 10 cm. x 4 cm. at its wider part x 1/2 cm. x bone deep in the right leg.

Ex.P.6 is the copy of the accident register. P.W.7, thereafter, referred Aboorvam for better management to Government Hospital, Cuddalore and accordingly she was removed and produced before the duty doctor at Government Hospital, Cuddalore, who on examining her, found her dead. Ex.P.8 is the death intimation sent by the doctor to the police authorities. This was at 6.00 a.m. Thereafter, P.W.1 proceeded to Kammapuram police station and reached it by 9.00 a.m., where he gave a complaint to P.W.14, the Sub-Inspector, who reduced the complaint into writing. Ex.P.1 is the said complaint. On the basis of Ex.P.1, a case in Crime No.292 of 1993 was

registered against the accused under Section 302 I.P.C. Ex.P.20 is the copy of the printed first information report. Exs.P.1 and P.20 were sent to the learned Judicial Magistrate, Vridhachalam through a police constable. The Circle Inspector, Vridhachalam, was informed about the registration of a grave crime.

4. On receipt of the information about the registration of a crime, P.W.15, the Circle Inspector, Vridhachalam, took up investigation in the case and proceeded to the scene of occurrence and reached it by 11.00 a.m. He prepared an observation mahazar, Ex.P.2, which was attested by P.W.5. He drew a rough sketch Ex.P.21. He seized M.Os.2 to 7 under a mahazar Ex.P.3, which was also attested by P.W.5. He questioned P.Ws.3, 5 and others and recorded their statements. The scene of occurrence was caused to be photographed. He left the village and reached the Government Hospital, Cuddalore, where the inquest was conducted between 4.00 p.m. and 6.00 p.m. over the body of Aboorvam in the presence of Panchayatdars. At the time of inquest, P.Ws.1, 2 and 4 were questioned and their statements were recorded. Ex.P.22 is the inquest report. After the inquest, the body was sent for postmortem with a requisition, Ex.P.8.

5. On receipt of the requisition, P.W.9, the Civil Assistant Surgeon attached to Government Hospital, Cuddalore, conducted autopsy on the body of Aboorvam and found the following anti-mortem injuries:-
1.There was five incised wounds all about 1" in length 1 mm. in width. Here and there blood clots present on the nape of the neck.
2.There is incised wound about one inch length and 1/4" in breadth 1 ½ " depth present on the right shoulder. Transverse in nature along the shoulder.
3.There is 2 incised wounds on the left shoulder one vertical in nature 1 ½ cm. in length 1 cm. breadth (2a) 2" depth.
(2b) Another wound ¾" vertical in nature 1"lenth 1/2 x 1/2 cm. breadth.
4.Incised wounds about 1" length 1/2 " depth, blood clots present on the wounds.
5.There is cut injuries over the little finger, ring finger and middle and index fingers. The ring finger is broken in the middle with bones is also fractured. Middle phalanxes was broken.
6.Left leg there is incised wound about 4" length 1" depth present over the calf muscle extending from the internal side to the back of the calf muscle. Blood clots present over the wound.
7.There is an incised wound 1" in length ½" depth was present over the right fore hand of the wrist present. Blood clots present.
She issued Ex.P.9, the post-mortem certificate with her opinion that the deceased died on account of shock and haemorrhage due to multiple injuries.

6. P.W.15, in the meantime, continuing with his investigation, returned to the police station, where he found P.W.6, the Village Administrative Officer of Keezhapalayam. At that time, the accused also appeared before him and gave a statement. In pursuance of the said statement, the accused took the police party to Puthur village, where he produced M.Os.1, 8 and 9, which were seized under a mahazar Ex.P.5 attested by P.W.6. P.W.6 was questioned and a statement was recorded. The accused was brought to the police station along with the material objects seized. The accused was sent

to Court for remand on the next day. P.W.15 issued a requisition, Ex.P.10, to the Court for recording the confessional statement of the accused.

7. On receipt of the requisition, P.W.10, the Judicial Magistrate No.2, Ulundurpet, sent an intimation to the sub jail, Vridhachalam, directing the production of the accused before him at 2.30 p.m. on 25.8 .93. Ex.P.11 is the intimation sent by the learned Magistrate to the police authorities. The accused was accordingly produced before him at 2.30 p.m. on 25.8.93. On the accused being produced and after sending everyone out of the Court, the learned Magistrate questioned the accused to ascertain whether he is in a mood to give a confessional statement. The learned Magistrate was satisfied that the accused is in a mood to give confession voluntarily. Thereafter, he directed the police authorities to take the accused and detain him in a separate cell at the sub jail with a further direction to produce him on the next day. Ex.P.12 contains the proceedings of the learned Magistrate dated 25.8.93. The accused was produced before the learned Magistrate at 12.30 p.m. on 26.8.93. The learned Magistrate once again followed the formalities, which he followed on the previous day. He again questioned the accused by putting several questions and warning him that if he gives a statement it will be used against him. After being satisfied that the accused is prepared to give a statement voluntarily and that there is no threat or inducement from the authorities, he recorded the statement given by the accused. Ex.P.13 is the proceedings of the learned Magistrate along with the statement of the accused.

8. In the statement given by the accused to the learned Magistrate, the accused has stated that the deceased has left his company after developing intimacy with one Kuppusamy and that she did not return to matrimonial home inspite of his several requests. He has stated that he and his wife were living separately for more than 12 years and that he came to know from others that the deceased was living with Kuppusamy. He has further stated that when he went and asked her to return to matrimonial home, she refused to come and that he was bluntly told that she will not return to her matrimonial home. He has further alleged that a month prior to the date of incident, when he went to Chidambaram, he was informed by his relatives that the deceased is living with Kuppusamy and that he was heckled at. He has further stated that about 10 or 15 days prior to the date of incident, he went to the house of Kuppusamy and found his wife washing vessels and therefore, he took her to task, which was witnessed by the villagers. In his statement, he has further stated that he returned to his village and then decided to murder his wife and on 20.8.93, he proceeded to Cuddalore, where after taking bath, he went to a wine shop and purchased brandy, which he consumed. According to him, after consuming brandy, he went to the shop of P.W.1 and purchased a knife by paying Rs.10 /- and that at Punnalur, he had a handle affixed to the knife and after witnessing a movie, he arrived at Kammapuram at 10.30 p.m. According to him, he went to the house of Kuppusamy and found the deceased lying in the house and that he inflicted several cuts on her. He has also stated that several people gathered at the scene and that he left the scene and surrendered before the police. After the statement was given, the learned Magistrate has affixed his certificate, which is Ex.P.14 in the case.

9. P.W.15, who was conducting investigation in the crime, sent the

material objects to the Court and the Court, by sending them, obtained Exs.P.18 and P.19, the reports of the chemical analyst and serologist, which are to the effect that M.O.1 contain human blood of B group tallying with the blood group of the deceased. He questioned other witnesses in the crime and filed the final report against the accused on 9.11.93.

10. When questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, the accused denied them and to a question whether he has given a statement to the Magistrate, he has stated 'Tamil typing' (untrue).

11. The prosecution before the trial Court examined P.W.9, the doctor, who conducted autopsy, to establish that Aboorvam died on account of the injuries sustained by her. P.W.9, on conducting autopsy, issued Ex.P.9, the post-mortem certificate with her opinion that Aboorvam died on account of shock and haemorrhage. When she gave evidence she has stated that injury No.1, which she found noted on the neck of the deceased, is fatal and similarly, the external injury No.6 with its corresponding internal injury is also fatal. It is the further evidence of P.W.9 that all the injuries found on the deceased could have been caused by a weapon like M.O.1. The accused also before the trial Court did not dispute that Aboorvam died on account of the injuries suffered by her. In view of the conclusive evidence available on record as to the cause of death, we hold that Aboorvam died on account of homicidal violence.

12. P.Ws.1 and 2 were examined by the prosecution to speak about the incident. They are independent and natural witnesses. According to them, as they were returning from the colony after witnessing a movie in a video, they heard some noises emanating from the house, where the deceased was living and that therefore, out of curiosity, they went inside the house and found the accused cutting the deceased. Both of them had no motive to give false evidence against the accused. In cross-examination, the accused did not succeed in eliciting any answer to show that the deceased was not cut by him. The only suggestion made to them is that they went there after the incident. Their evidence is supported by P.W.3, another villager, who rushed to the scene on hearing the cries. P.W.3 has stated that on reaching the scene, he saw the accused coming out of the house and that he wanted to apprehend the accused and that the accused threatened him and told him that he is going to surrender before the police station. According to P.W.3, after the accused left, P.Ws.1 and 2 removed the injured Aboorvam to the hospital in a van. According to P.Ws.1 and 2, after they left the scene of occurrence with the injured for the hospital, they met P.W.4, Palanivelu, the younger brother of the deceased and took him also along with them. Their evidence is supported by P.W.7, the doctor, before whom the injured was produced, who in his evidence, has stated that the injured was produced before him at 3.15 a.m. on the night of 20/21.8.93 by Palanivelu and that when questioned as to the cause of death, he was informed that the v ictim girl was cut by a known person with a knife. The evidence of P.Ws.1 and 2 is corroborated by P.W.3, who saw the accused coming out of the house of the deceased. It is not the case of the defence that the accused was not known to the witnesses earlier. There was also sufficient light available at the scene as not only the street lights

were burning but also a chimney lamp was burning inside the house. We, therefore, do not find any reason to reject either the ocular testimony of P.Ws.1 and 2 or the evidence of P.W.3, who saw the accused coming out of the house with a knife. We accept their evidence and hold that it was the accused who caused the injuries.

13. The next piece of evidence produced by the prosecution against the accused is the judicial confession given by him to the learned Magistrate, P.W.10. P.W.10, the Judicial Magistrate No.2, Ulundurpet, in his evidence, stated that a requisition was received by him from the investigating officer and that he recorded the confessional statement of the accused after following the formalities. He has stated that after satisfying himself that the statement given by the accused is voluntary, he recorded the statement. In the said statement, which we have extracted above, the accused has stated that he has cut his wife. He has also stated that after cutting his wife, Aboorvam, he surrendered before the police authorities. When questioned under Section 313 Cr.P.C., he did not say that the said statement was given on account of threat and inducement by the police; but only stated that it is false. Therefore, this Court is unable to say that the confession was retracted by the accused when he was questioned under Section 313 Cr.P.C. Even if it is to be assumed that the accused has retracted his confession, then the question that is to be decided by this Court is whether the said confession had been given voluntarily and if this Court finds that the said confession was given voluntarily by the accused, then it can be relied upon.

14. In SHANKARIA VERSUS STATE OF RAJASTHAN (AIR 1978 SC 1248), the Supreme Court held that a confession, if voluntarily and truthfully made, is a efficacious proof of guilt and the Court can apply a double test, viz., whether the confession was perfectly voluntary and if so, whether it is true and trustworthy. The Supreme Court went on to observe as follows:-

"Satisfaction of the first test is a sine qua non for its admissibility in evidence. If the confession appears to the Court to have been caused by any inducement, threat or promise such as is mentioned in Section 24, Evidence Act, it must be excluded and rejected brevi manu. If such a case, the question of proceeding further to apply the second test, does not arise. If the first test is satisfied, the Court must, before acting upon the confession, reach the finding that what is stated therein is true and reliable. For judging the reliability of such a confession, or for that matter of any substantive piece of evidence, there is no rigid canon of universal application. Even so, one broad method which may be useful in most cases for evaluating a confession may be indicated. The Court should carefully examine the confession and compare it with the rest of evidence, in the light of the surrounding circumstances and probabilities of the case. If on such examination and comparison, the confession appears to be a probable catalogue of events and naturally fits in with the rest of the evidence and the surrounding circumstances, it may be taken to have satisfied the second test."

In SHANKARIA VERSUS STATE OF RAJASTHAN (AIR 1978 SC 1399), the Supreme Court held that the confession, if not retracted at the earliest

opportunity, militate to some extent against the contention of accused that the confession was recorded under pressure of the police. In the case before the Supreme Court, the confession was made on 14.6.1974 and the trial commenced on 10.1.1975 when charges were framed and read over to accused and the accused did not retract the confession on that day though he pleaded guilty. The confession was recorded on 14.6.1975 when he was examined under Section 313 Cr.P.C. The Supreme Court held that as the confession was not retracted at the earliest opportunity when he was questioned on the charge but was retracted only at the stage when he was questioned under Section 313 Cr.P.C., the confession can be treated as voluntary.

15. When we apply the above principles enunciated by the Supreme Court, we find that the confession in the case before us was recorded by the Magistrate on 26.8.93 and was not retracted even on 21.2.94 when the charge was framed and read over to him. The accused was questioned under Section 313 Cr.P.C. on 8.4.94 and even at that time, the accused did not retract the confession by telling that it was made on account of inducement or threat; but has simply stated 'Tamil typing' (false). We, therefore, hold that the confession made by the accused, which we have extracted above, show that the accused cut the deceased since she has left her matrimonial home and was living in the house of Kuppusamy. We accept the judicial confession and hold that the accused cut the deceased. The evidence of P.Ws.1 and 2 and the judicial confession of the accused clearly establish that it was the accused who inflicted injuries on Aboorvam and that Aboorvam died on account of the injuries suffered by her.

16. The learned counsel appearing for the accused contends that the accused can be given the benefit of Exception 1 to Section 300 I.P. C. In support of his plea, he relies upon the evidence of P.W.3, who, in the cross-examination, has stated that the deceased was lying naked in the house. The learned counsel submits that the accused must have seen his wife in the company of another person and therefore, must have lost his bearings and that he must have cut her in that state of mind. We are unable to accept the said contention of the learned counsel. The evidence of P.W.3 is not supported by P.W.12, the police constable, who handed over the dead body to the doctor for autopsy. In the cross-examination, he has stated that the dead body of Aboorvam had inner garments and that it also had a saree around it. The answer given by P.W.3 in the cross-examination, in our view, is a stray answer in view of the evidence of P.W.2. P.W.2, in the crossexamination, has stated that when he and P.W.1 went to the house of the deceased, they found the deceased sleeping on the ground near the door steps. If the deceased had been sleeping near the door steps as found by P.Ws.1 and 2, then it is difficult for the Court to presume that she must have been sleeping naked. The evidence of P.Ws.2 and 12 show that the deceased was fully clothed when the incident took place. Further, there is no material on record to show that the deceased was seen in a compromising position with another person for the accused to cut the deceased on account of grave and sudden provocation. The averments in the judicial confession also do not show that the deceased was seen in the company of another person at the time when he cut the deceased. We, therefore, reject the contention of the learned counsel.

17. On the evidence, which is overwhelming in nature, the trial Judge was justified in convicting and sentencing the accused and we find no reason to interfere with his findings and conclusions. The appeal is, therefore, dismissed.

(N.D.,J.) (A.P.,J.)
05.03.2002

Index: Yes

Website: Yes

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To

1.The Sessions Judge,South Arcot Vallalar District, Cuddalore.

2.The Public Prosecutor, High Court, Madras.

3.The Superintendent, Central Prison, Cuddalore.

4.The Inspector of Police, Kammapuram Police Station.

5.The Officer in charge, Sub Jail, Vridhachalam.

N.DHINAKAR, J. &
A.PACKIARAJ, J.

(sra)

05.03.2002

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